wholly preposterous manner in refusing under all circumstances to follow the vagaries of the state courts. So much is apparent from the most cursory reading of the facts of the case in question.

Mr. White then proceeds to analyze the opinion of the majority of the court, and finds in it an unambiguous statement that the decision of the state court, overruling prior decisions and holding unconstitutional the law under which the contract was made, was a law impairing the obligation of contracts. The statement which he relies on, however, does not appear so plain as he finds it. And the different interpretation of it by Mr. Justice Miller in his dissenting opinion is not too lightly to be ignored. A member of the court who took part in the discussions of the case was in quite as good a position to know what was actually decided as is a commentator of the present day. And when the court has repeatedly held that a case of the sort under discussion, coming up on appeal from the highest court of a state, presents no federal question, one may be pardoned for hesitating before he adopts the writer's conclusion that a federal question was decided in the case now under consideration.

The supposed decision that a judgment of a state court, holding a law unconstitutional, may itself be a law impairing the obligation of contracts, Mr. White then justifies in a most ingenious manner. He shows that the power to declare legislative acts of the colonies invalid was formerly held by the king in council; that this power was legislative, and, so far as it belonged to the federal government, it was at one time intended to be intrusted to congress; and that although finally given to the courts it has always remained a legislative power. [But no inference can be drawn from the power exercised by the king in council; he had judicial as well as legislative power.] This reasoning, moreover, is based upon a total misconception of our systems of constitutional law. A court in considering the constitutionality of a legislative act does not properly assume the attitude of a revising legislative body, weighing the pros and cons, and deciding for itself upon the propriety of the act in question. The court takes a strictly judicial position, looking to all the possible motives of the legislature, and holding no law invalid which can, within the limits of the constitution, be regarded as an expression of a possible political opinion as opposed to an arbitrary whim. In so doing, the court performs not a legislative but a judicial function.

J. G. P.

FORMS OF PLEADING. By Austin Abbott. Completed for publication after his decease by Carlos C. Alden. Vol. II. New York: Baker, Voorhis & Co. 1899. pp. xxxix, 805 – 1858.

Twenty years and more New York has used Mr. Abbott's books as standards. One revision was not enough, nor yet a second, and last year appeared the first volume of something more then a revision, — not a collection of "General Forms of Practice," as were the others, but a work devoted to pleadings alone. Its thoroughness has caused the practitioners of New York to take considerable interest in the somewhat delayed second volume. The work, as its name indicates, consists chiefly of forms. However, few lawyers of established standing stick slavishly to such precedents, and the book is likely to prove most valuable for its authorities. At first glance the citations may seem too scant to justify this assertion. But it must be remembered that two large volumes are

devoted to a narrow field, — complaints, demurrers, and answers; that nearly every page shows some authority; that extensive notes appear at intervals. For the ground covered, these books gather, assort, and index a mass of authority both complete and accessible. The work is typical of the specializing tendency of the age, and perhaps it has the fault, natural where much space is devoted to a small subject, of being at times diffuse. It has also, however, the merit of treating its subject fully and exhaustively. Books like these are not interesting nor even profitable reading. Filled as they are with dried frames to which the lawyer must add flesh and life, they permit little display of the essentially human faculty of connected reasoning. They are the tools of the lawyer's handicraft, and their existence must be justified by their practical utility. Of its kind, this work seems well done, and likely to prove a credit to its author.

G. B. H.

HANDBOOK ON THE LAW OF NEGLIGENCE. By Morton Barrows. St. Paul, Minn.: West Publishing Co. 1900. pp. xii, 634.

As a result of the great increase of litigation over questions of negligence in the last decade, — says the author in his preface, — two tendencies may be noted, — toward the taking of increased precautions by property owners and employers of labor on the one hand, and the more exact enunciation of the involved law by the courts on the other. And to give a concise statement of the settled law on the subject, and the grounds of the conflicting decisions where the law is in dispute, are stated to be the aims of this book, the latest addition to the Hornbook Series. An introductory chapter treats of the fundamental principles of the law of negligence, and contains an admirable brief discussion of the doctrine of proximate cause. In the chapter treating of dangerous instrumentalities, it is stated that one who keeps a dangerous explosive is under a duty of care commensurate with the danger, and hence negligence may be predicated upon the quantity without regard to the manner in which it is protected. To say that an absolute liability is imposed, where the location is such as to cause reasonable fear to those living in the vicinity, would seem to be a better doctrine. See 13 HARVARD LAW REVIEW, 310. It is to be regretted that to the present jumble of theories as to degrees of care, the author adds still another view. Taking the classification of Wharton as a basis, — "slight" care required of the average man, and "ordinary" care required of an expert, — he adds a third class, — "great" care required of a common carrier of passengers. In justification we are told that the decisions of the courts have raised the degree of care and skill demanded of such carriers to a standard higher than that of an expert. Granting the truth of this assertion, and the theoretical accuracy of such a classification, it would seem nevertheless to work for simplicity to say that, although the amount of care requisite may vary with each particular instance, there are no degrees of care, due care under all the circumstances answering every case. Nor does the author himself maintain his position with consistency; for in the later pages of the book the term "ordinary" care is frequently used in the colloquial sense, and there are such statements as the following: "The degree of diligence requisite to constitute ordinary care" — in dealing with firearms — "is proportionate to the danger to be apprehended." This is but another way of stating the more simple rule. Although open to occasional criticisms, however, the book as a whole is an excellent